



Terms of Service

PLEASE READ THE FOLLOWING TERMS OF SERVICE (THE "AGREEMENT") CAREFULLY BEFORE INSTALLING, ACCESSING, OR OTHERWISE USING THE SOFTWARE OR SERVICES. YOU MAY NOT USE THE SOFTWARE UNTIL YOU ACCEPT THE TERMS OF THIS AGREEMENT. YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, OR ACCESSING OR USING THE SERVICES. PLEASE MAINTAIN A COPY FOR YOUR RECORDS.

This Agreement is by and between the provider of the products or services described herein ("we", "us" or "our") (either directly with iLinc Communications, Inc. ("iLinc") or indirectly by virtue of a reseller agreement between us and iLinc) and the individual or entity who purchased and is using the software ("Customer" or "you") and the individuals accessing the software ("End Users"). This Agreement describes your and your End Users' right to access and use of the iLinc software (the "Software") and our Web and audio conferencing services (the "Service") that are hosted through our Web servers (the "Web Servers"). The Software and Services are provided to Customer under the terms and conditions of this Agreement, and any rules or policies that may be published on our Web site. Note for Users who are not Customers: Section 10 (Credit Card Authorization) and Section 9 (Limited Warranty and Disclaimer; Limit of Liability; Indemnity) of this Agreement do not apply to you. If you or your company is a Customer and has an existing written agreement with us ("Written Agreement"), the Written Agreement will govern to the extent of any inconsistency or conflict between this Agreement and the Written Agreement.

1. License Grant. Subject to the terms and conditions of this Agreement, we grant to Customer, a limited, non-exclusive, non-transferable license to use the Software (as well as any related documentation, instructions, evaluations, or other written materials). Customer will provide access to the Software only to its End Users and any other persons who are authorized by Customer to access the Software during the term of this Agreement.

2. Setup and Customization. Customer will provide us with all information required for setup of the Customer's Software Web site and registration of the person identified as the Customer's administrator (the "Administrator"). We will create any necessary login pages and passwords for Customer's Administrator, but Customer will be responsible for the registration of End Users. During the Term, Customer shall be permitted to enroll as many End Users as identified on the order form and establish as many concurrent connections as identified on the order form. Upon Customer's request, we will create a customized look and feel to the Customer's Web site and Customer agrees to pay for all changes identified with that Customization. For On Demand Customers, each host pin will provide access for an unlimited number of participants but to only one host site and one host online session.

3. Customer Content. If, in the process of using the Software or Service, Customer or an End User uploads, records or otherwise transmits any content to the Web Server, (including any PowerPoint™ presentations, photographs, illustrations, icons, articles, text, audio clips, or video clips (the "Content")) through the Service, then Customer represents and warrants that Customer: is either the owner or licensee of the Content; is solely responsible for the Content; and acknowledges and agrees that we neither control nor monitor the Content, nor guarantee the accuracy, integrity, security or quality of such Content. Customer will not use the Software or Service or upload, record or otherwise transmit any Content that: infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; violates any law, statute, ordinance or regulation; is defamatory, trade libelous, threatening, harassing, obscene, harmful, or pornographic; or contains any viruses or other software that is intended to damage or interfere with (or surreptitiously intercept or capture) any system, data or personal information. Because Customer and its End Users will be in control of the content displayed online as a part of use of the Software, Customer understands that by using the Services or Software that End Users may be exposed to Content that is offensive or a violation of this Agreement, and that under no circumstances will we be liable to any person or entity for any alleged damages sustained by any End User. As part of the Service, you may submit questions or comments to us. We reserve the right to edit and post the questions or comments that you submit to us, along with their answers, without revealing your personally identifiable information as a part of our customer support Web site. Customer agrees that all communications, comments, feedback, suggestions, ideas, problem resolutions and other submissions related to the Services or Software submitted to us by Customer or its End Users shall be and remain our property with all non-exclusive worldwide rights, titles and interests in any resulting intellectual property. Upon termination of this Agreement or use of the Service, Customer agrees that any Content posted to its servers shall not be returned to Customer and shall be removed from the Web Server.

4. Customer and Technical Support. Unless you have purchased enhanced customer support services, we will provide the basic customer and technical support for the Software to an administrative contact identified by the Customer. Our support obligation will be limited to email, chat or telephone support to Customer's administrative contact and/or your End Users (depending upon the support agreement acquired) located in the U.S. and Canada during our normal business hours (8:30 a.m. to 8:30 p.m. Eastern Time, Monday through Friday - excluding all U.S. federal holidays). We will provide e-mail only support to End Users outside the U.S. and Canada, and all support will be provided in the English. Customer and technical support will address issues related to use of the Software, such as registration, navigation, configuration, installation and troubleshooting but will not include issues with respect to any End Users' own internet connectivity issues or computer hardware issues. We may conduct maintenance of the software and Customer's Web site, which will normally be performed each Sunday from 6:00 p.m.-11:00 p.m. Pacific Time. During that scheduled maintenance time, the Service and the Software will not be available for use. Customer



acknowledges and agrees that, due to the inherent qualities of the Internet, we cannot prevent and, therefore, is not responsible for inadvertent security breaches, nor are we responsible for any failure to maintain the confidentiality of that information.

5. Ownership. Customer acknowledges and agrees that the Software and all related items provided to it and its End Users hereunder, as well as any and all copies thereof, contain valuable copyrighted material, trademarks, trade dress, service marks, trade secrets and proprietary and confidential information of ours and/or its licensors, and that we and/or its licensors shall own and retain all respective applicable copyrights, trademarks, service marks, trade dress, trade secrets and other intellectual and property rights in the Software and all related items provided hereunder, including any enhancements thereto or derivative works thereof, whether or not authorized concerning our respective rights. It is expressly understood and agreed that title to, or ownership of, any part of the Software or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall not ever be transferred to Customer. All graphics, logos, service marks, and trade names, including third-party names, product names, and brand names (collectively, the "Marks") relating to the Software and Services are trademarks of ours or our partners or affiliated entities. You are prohibited from using any Marks without our prior written permission. We reserves all rights related to the Marks not expressly granted in this Agreement.

6. Limitations on Use. Users may not use the Software except as expressly permitted under this License Agreement or the terms of the order form, including the requirements provided by applicable U.S. intellectual property laws, and U.S. copyright laws. Any routine and/or systematic redistribution of any portion of the Software is expressly prohibited. Furthermore, Customer and End Users shall not, nor shall they permit others to do any of the following: (a) sell, distribute, transmit, or otherwise provide access or use to any person not authorized by this License; (b) store any Software in any information storage and retrieval system which provides access to persons not authorized by this License or provides concurrent usage by more End-Users than those authorized by this License; (c) rent, sublicense, lease, or assign any License to the Software to any person other than Customer; (d) copy, reproduce, create derivative works from, de-compile, disassemble, or otherwise reverse-engineer the Software, or in any other way alter, translate, modify, or adapt the Software; or (e) make use of the Internet or an Intranet to provide access to the Software through any local or wide area networks, timesharing services, multiple site arrangements or other forums which permit multiple simultaneous access or distribution other than provided by this Agreement. Any access to or use of the Software (or any part thereof) by persons or other users who are not authorized by Customer and this Agreement is specifically prohibited.

7. Payments and Amendments. Any undisputed monthly payment not received when due will bear interest at the lower of 1.5% per month or the highest rate permitted by law, and we may suspend the Service, if Customer's payment of undisputed fees is ten (10) or more business days delinquent. Additionally, we are entitled to recover any sums expended in connection with the collection of undisputed sums not paid when due, including reasonable attorneys' fees. Should Customer continue to use the Service or Software after the term of this Agreement, then Customer agrees to pay the monthly fee associated with use of the Software or Service until discontinuance of use of the Software by Customer at the then prevailing monthly rates. Monthly Minimum Commitment Fees will be invoiced monthly in advance throughout the term of the contract. Minimum Commitment Fees (whether minutes or dollars) that are not utilized by Customer during the month for which they were committed may not be carried forward into the next month's usage.

8. Term and Termination. The term ("Term") means the duration of this Agreement commencing with the earliest of: (i) the date that we accept your order form, or (ii) that date that you first use the Services, or (iii) the date that you install the Software; and continuing until the end of the applicable period as designated by us, subject to earlier termination in accordance with this Agreement. Upon expiration of the initial Term, this Agreement shall automatically renew for like terms until otherwise terminated as provided herein. Either party may terminate this Agreement at the end of any Term (initial or renewal) by providing the other party written notice of termination at least 30 days prior to the end of such Term. The following provisions will survive the expiration or termination of this Agreement: Sections 5, 6, 7, and 9. Customer may terminate this Agreement if we fail to provide the Software and Service to Customer and such breach is not cured within five (5) days after receipt of written notice of the breach. We may terminate this Agreement if Customer breaches any term or condition of this Agreement, including the failure to make timely payment of any fees due if such breach is not cured within five (5) days after receipt of written notice of Customer's breach. Upon termination, all payment obligations of Customer due through the date of termination shall be then due and payable, we may revoke the License granted to Customer and we may immediately prohibit Customer's use and access to the Software.

9. No Warranty. WE MAKE NO REPRESENTATIONS ABOUT THE SOFTWARE OR SERVICES AND ARE PROVIDING THE SOFTWARE AND SERVICES TO CUSTOMER AND ITS END USER "AS IS" AND WITHOUT WARRANTY OF ANY KIND. WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR A COURSE OF DEALINGS BETWEEN THE PARTIES. ILINC MAKES NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SOFTWARE, REGARDING ANY GOODS OR SOFTWARE PURCHASED OR OBTAINED THROUGH THE SOFTWARE, REGARDING ANY TRANSACTIONS ENTERED INTO THROUGH THE SOFTWARE OR THAT THE SOFTWARE WILL MEET ANY USER'S REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SOFTWARE IS AT YOUR SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS AT YOUR OWN



DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SOFTWARE. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH CUSTOMER. Specifically we do not cover claims made by the customer resulting from items unrelated to the Software, including but not limited to loss of Internet connectivity, disconnections, firewall and proxy difficulties, server down time, customer service complaints, computer hardware malfunctions, user error, or interruptions caused by third party hardware and software outside the control of iLinc. iLinc does not warrant that the Software will operate in combination with any other software selected by Customer, nor that it will operate in an uninterrupted manner should Customer experience Internet disruptions.

10. Liability Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, WE SHALL NOT BE LIABLE TO CUSTOMER OR ANY END USER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING (WITHOUT LIMITATION) DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY LOSS OF PROFIT, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF WE HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT WILL OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT EVER EXCEED THE TOTAL AMOUNT OF ANY FEES PAID BY CUSTOMER DURING THE TERM HEREOF. We agree to defend Customer and to pay any judgments, costs and expenses, or amounts paid in settlement to which we agree, which Customer may sustain as the result of any claim by a third party that the Software by itself and in unmodified form infringes or misappropriates such third party's United States copyright, trade secrets, or patent; provided that Customer provides us with prompt written notice of such claims or threat of such claims and that we are given full control and authority to investigate, defend and/or settle such claim. In the event of any claim that our Service infringes a third party's intellectual property rights, we may, at our option, procure the rights to allow Customer to continue to use the Service and Software, modify the Software or Service so it is not infringing in which case Customer shall immediately cease using the infringing Software or Service, or terminate this Agreement and refund pro-rata portion of any unused Customer fees actually paid. Customer agrees to defend, indemnify and hold us harmless, (and iLinc's subsidiaries, affiliates, officers, employees, and directors) from any and all third party claims, liabilities, damages and/or costs (including attorney fees) due to or arising directly out of Customer's (or any End User's): use of the Software or Service; violation of this Agreement; unauthorized use or known breach of security; or infringement or violation, of any intellectual property or other right of any person or entity related to the Customer's Content.

11. Credit Card Authorization (Applicable To e-Commerce Customers Only). For pay-per-use or pay-per-minute subscriptions to the Software and actual usage by Customer only, Customer hereby authorizes us to charge Customer's credit card each month from month to month based upon either the actual monthly usage or the actual per-minute, per-participant usage at the then published per month or per-minute rates (as applicable). No invoice or receipt will be provided to Customer for this electronic authorization. If Customer does not notify us of any discrepancies within ninety (90) days after they first appear on any statement, Customer will be considered to have accepted the amounts charged. Customer releases us from any and all liability and claims resulting from any error or discrepancy that is not reported to us within that ninety (90) day notice period.

12. Per Minute Use Charges (Applicable to Pay Per Use Customers Only). For Customers using the iLinc Suite™ on a per minute basis, or iLinc On Demand™ audio conferencing and Web conferencing services only, we will provide access to audio conference calling services to Customer and its guests. For audio conferencing services, this will include the process of reserving the call, providing inbound access nationally and internationally, outbound access nationally and internationally, and connecting participants to prearranged conference calls. Customer will use its host and participant personal identification numbers (PIN's) to access the Services, and we will undertake no extra security precautions unless requested in advance of the conference call. Unless otherwise agreed in writing, Customer agrees to pay for standard On Demand Web conferencing at the rate of \$0.25 per minute per participant, and agrees to pay for standard On Demand audio conferencing (toll-free reservationless) at the rate of \$0.15 per minute per participant. Rates for this price is for On Demand Web Conferencing only and does not include On Demand Audio Conferencing nor vice versa. Unless otherwise agreed in writing, minutes charged for participant usage will include up to 20 minutes before the host arrives in the session and 20 minutes after the host departs the session. Use of call taping features may subject the Customer and its invited End Users to state or federal laws or regulations regarding the notification to participants.

13. Updates; Applicable Terms and Authorization for Auto Updates. We may, in our sole discretion, provide, and this Agreement applies to, all updates, features, or other functionality, including without limitation alterations of functionality, features, storage, security, availability, content, and other information relating to the Software or Services (collectively, "Updates"). We may provide such Updates to its customer after the date that such Updates are made available, subject to any additional terms and conditions provided by us applicable to such Updates. You hereby authorize us to, and agree that we may, automatically and in good faith transmit, access, install, and otherwise provide Updates without further notice or need for your prior consent. You also agree that we may obtain information reasonably necessary to provide the Services. We have no obligation to, and nothing in this Agreement may be construed to require us to, create, provide, or install Updates.

14. Miscellaneous Provisions.

- (a) Governing Law. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Arizona (except that body of law controlling conflicts of law) and specifically excluding from application to this



Agreement that law known as the United Nations Convention on the International Sale of Goods. Customer consents to the personal jurisdiction and venue of the State of Arizona, or any other state in which iLinc maintains its primary corporate office, but not the exclusive jurisdiction of the State of Arizona. The prevailing party in any litigation between the parties shall recover its reasonable attorneys' fees and costs from the non-prevailing party.

- (b) Marketing. Customer hereby consents to iLinc's use of Customer's name and logo for the limited purpose of identifying Customer as an iLinc Customer. From time to time, iLinc selects candidates from its customer list whom it wishes to announce as a business relationship. Should Customer be selected, then iLinc will notify Customer before the press release or quote is published in the public domain.
- (c) Government Regulations. Neither Customer nor any of its Registered Users will export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. government and any country or organization of nations within whose jurisdiction Customer operates or does business. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.
- (d) Survivability. The terms of the following Sections of this Agreement shall survive any cancellation, termination, or rescission: Ownership, Limitation of Use, Warranty, Indemnity and Limitation of Liability.
- (e) Severability and Waiver. In the event any provision of this Agreement is held to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect, and the unenforceable provisions will be construed in accordance with applicable law as nearly as possible to reflect the original intention of the parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Customer may not assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of ours, and such consent may be unreasonably withheld.
- (f) Governmental Agencies. Use of the Software or Service by the United States Government or other governmental agencies shall be as "restricted computer software" or "limited rights data" as set forth in "Rights in Data - General" at 48 CFR 52.227-14, or as "commercial computer software" or "commercial computer software documentation" under DFARS 252.227-7015, or under such other similar applicable terms and conditions to prevent the transfer of rights in and to the technology to the government other than under normal commercial licensing terms and conditions.
- (g) Privacy Policy. Our Privacy Policy can be accessed at on our Web site ("Privacy Policy") and you hereby acknowledge that you have accessed and read the Privacy Policy, that it is a part of this Agreement, and that it is incorporated herein by this reference. The Privacy Policy explains how certain information about you may be processed and used, among many other details.
- (h) Entire Agreement and Amendments. The Agreement (including the Privacy Policy and any related consents provided by or disclosures provided to you in connection with the Software or Services) constitutes the entire agreement between us and you with respect to the Software and Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between us and you regarding them. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to us, will have no effect and that this Agreement is the only contract and/or license between us and you regarding the Software and Services and may only be amended as set forth herein. The application of the United Nations Convention on the International Sale of Goods is hereby expressly excluded. Our performance of this Agreement (including the Privacy Policy) is subject to existing laws and legal process, and you agree that we may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of this Agreement or that policy. A printed version of this Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. We may, at any time, amend the provisions of this Agreement and/or the Privacy Policy, and you may accept the amended provisions in the manner indicated in the amendment notice as communicated by us. Any amendment proposed by you may only be accepted by us in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything to the contrary herein, if we post amended terms on the Customer's Web site, such terms will automatically become effective ten (10) days after they are posted on the Customer's Web site. By using the Software or the Services after such revised terms are posted, you agree to be bound by any such amended provisions. The Services are being provided electronically and you agree that we may communicate electronically with you for matters relating to the Services and Software. Therefore, you agree to periodically visit the Customer's Web site to examine the then-current Agreement (including the Privacy Policy).